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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/955,507	09/18/2001	Donna J. Crowther	1999U033.US	1465

7590 10/21/2002  
Univation Technologies, LLC  
Suite 1950  
5555 San Felipe  
Houston, TX 77056

EXAMINER

RABAGO, ROBERTO

ART UNIT	PAPER NUMBER
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1713

DATE MAILED: 10/21/2002

*Remailed 11/21/02*

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/955,507

Applicant(s)

CROWTHER ET AL.

Examiner

Rob Rábago

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 July 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 4-40 is/are pending in the application.
- 4a) Of the above claim(s) 14-39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 4-12 and 40 is/are rejected.
- 7) ☒ Claim(s) 13 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of claims 1-13 in Paper No. 7 is acknowledged.

The traversal is on the ground(s) that there is no undue burden. This is not found persuasive because a search of the catalyst claims does not require a search of polymerization methods and polymers. Accordingly, search burden exists.

The requirement is still deemed proper and is therefore made FINAL.

### ***Information Disclosure Statement***

2. The information disclosure statement filed 7/26/02 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. The Canadian patents have not been considered because they are illegible.

### ***Claim Rejections - 35 USC § 112***

3. Claims 4-12 and 40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention for the reasons set forth in item 6 of the Office action mailed 4/4/2002.

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Applicant's arguments filed 7/26/2002 have been fully considered but they are not persuasive. While applicants may be their own lexicographer, the scope of all claim terminology must be clear. In this case it is not, and applicants' remarks contain nothing which clarifies the new meaning. Applicants have attached the suffix "-type" to the otherwise well-known term "cyclopentadienyl" to expand its meaning without providing any basis for determining the bounds of the expanded meaning. Absent a reasonable definition for determining the scope of the expanded meaning, the addition of the word "type" to an otherwise definite expression extends the scope of the expression so as to render it indefinite. *Ex parte Copenhaver*, 109 USPQ 118, 1955.

#### ***Claim Rejections - 35 USC § 102***

4. Claims 4, 5 and 7 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Chen et al. (Organometallics 1994) for the reasons set forth in item 8 of the Office action mailed 4/4/2002.

Applicant's arguments filed 7/26/2002 have been fully considered but they are not persuasive. Applicants' assert that the new limitation regarding monomers renders the reference non-anticipatory. However, the indication of particular monomers is nothing more than an intended-use limitation in these catalyst claims. Any metallocene catalyst which is effective for polymerizing propylene will also polymerize ethylene, and therefore the reference clearly anticipates the claims.

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5. Claims 4, 5 and 7-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Langhauser et al. (US 5,491,205) for the reasons set forth in item 9 of the Office action mailed 4/4/2002.

Applicants' arguments filed 7/26/2002 have been fully considered but they are not persuasive. Contrary to applicants' assertions, there is nothing the claims or the specification which precludes the structures set forth in Crowther. If applicants intend for the reference structures to be outside the scope of the claims, then the claim terminology should clearly reflect that intention.

***Claim Rejections - 35 USC § 103***

6. Claims 4-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Winter et al. (US 5,532,396) for the reasons set forth in item 11 of the Office action mailed 4/4/2002.

Applicants' arguments filed 7/26/2002 have been fully considered but they are not persuasive. Applicants assert that there is no motivation for the use of a cyclic bridge or a support.

Regarding the cyclic bridge, applicants' position is not accepted because patentee has specifically stated that the bridge may be a cyclic bridge. A reference is effective for what it suggests to those of ordinary skill in the art, regardless of whether or not all embodiments are exemplified. Regarding instant claims 4, 5 and 7-12, the use of a cyclic bridge (any cyclic bridge) represents the only modification of the cited working examples which already contain germanium in the bridge, and such a modification has

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been suggested as previously cited. One of ordinary skill in the art would be motivated to make such a substitution because patentee has stated that a useful polymerization would result, with reasonable success expected.

Regarding claim 6, the use of supported polymerization catalysts, including those comprising metallocenes, has been conventional for decades. The previously cited suggestion in the reference provides suitable motivation to use a support for the purpose of achieving established benefits of such use, including improved gas-phase utilization, improved bulk density, improved particle morphology, etc. Reasonable success would be expected because patentee has specifically stated that a support may be used.

In sum, applicants are attempting to obtain a patent on catalyst species which have been fairly suggested by Winter. Absent a reasonable showing that the instantly claimed genus provides unexpected results, the rejection is maintained.

7. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Langhauser et al. (US 5,491,205) for the reasons set forth in item 7 of the Office action mailed 4/4/2002.

#### ***Allowable Subject Matter***

8. Claim 13 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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**Conclusion**

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rob Rábago whose telephone number is (703) 308-4347. The examiner can normally be reached from 6:30 am - 3:00 pm Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu can be reached on (703) 308-2450. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Rob Rábago  
Examiner  
Art Unit 1713

RR   
October 18, 2002

  
DAVID W. WU  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700